

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

- against -

BENJAMIN CARDONA,

07 Cr. 1162 (JGK)

MEMORANDUM OPINION
AND ORDER

Defendant.

JOHN G. KOELTL, District Judge:

The Court has received the attached letter from the Government requesting an extension of the statutory 90-day deadline for the Court's determination of defendant Benjamin Cardona's restitution in this case. See 18 U.S.C. § 3664(d)(5). The deadline expires tomorrow, March 11, 2010.

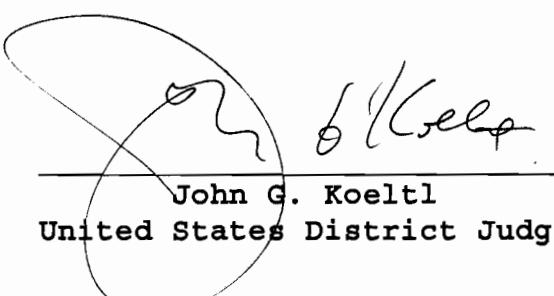
The Court of Appeals for the Second Circuit has held that the purpose behind the rule that restitution must be determined no more than 90 days after the defendant's sentencing "is not to protect defendants from drawn-out sentencing proceedings or to establish finality; rather, it is to protect crime victims from the willful dissipation of defendants' assets." United States v. Zakhary, 357 F.3d 186, 191 (2d Cir. 2004). As a result, a court's extension of the determination beyond 90 days "provides no basis for vacating the restitution order unless the defendant can show that the extension caused him actual prejudice."

United States v. Douglas, 525 F.3d 225, 252-53 (2d Cir. 2008).

In this case, the Government plainly should have sought an extension before the eve of the deadline. However, in view of the fact that the defendant is considering whether to consent to an extension beyond 90 days, because the Court is not aware of any prejudice that would result to the defendant as a result of the extension, and because this case involves complex issues and multiple defendants, the Court will extend the deadline for the determination of defendant Cardona's restitution until **April 9, 2010**. If the parties agree, the Court will consider any further extension sought by the parties. The Government should promptly propose a schedule to the Court including a hearing date, if necessary, with the presence of the defendant.

SO ORDERED.

Dated: New York, New York
 March 10, 2010

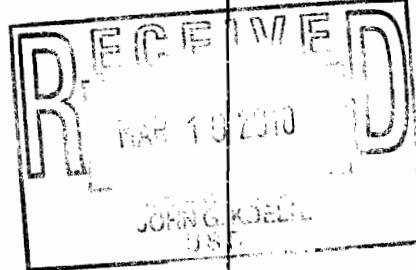

John G. Koeltl
United States District Judge

**U.S. Department of Justice**

*United States Attorney
Southern District of New York*

*The Silvio J. Mollo Building
One Saint Andrew's Plaza
New York, New York 10007*

March 10, 2010

**BY FAX**

The Honorable John G. Koeltl
United States District Court
Southern District of New York
500 Pearl Street
New York, New York 10007
Fax: 212 805 7912

Re: United States v. Paul Horscroft, 07 Cr. 1131 (JGK)
United States v. Rhea Wicklund, 07 Cr. 1220 (JGK)
United States v. Benjamin Cardona, 07 Cr. 1162 (JGK)
United States v. Wilfredo Hernandez, 07 Cr. 1162 (JGK)

Dear Judge Koeltl:

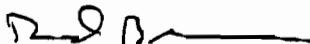
The defendant Benjamin Cardona was sentenced in this case on December 11, 2009. At the time of Cardona's sentencing, restitution was not decided by the Court because the factual issues relating to Cardona's restitution are the same as the factual issues that must be resolved for restitution orders to be imposed in connection with the sentencing of Paul Horscroft, Rhea Wicklund, and Wilfredo Hernandez. As the Court will remember, the issues are complex and have been the subject of detailed submissions by the Government, Gartner, Inc., and Paul Horscroft.

At the time of Cardona's sentencing, the Court set a deadline of 90 days for the resolution of the restitution issue for his case. That deadline is March 11, 2010. The Government respectfully requests that the Court extend that deadline for an additional 90 days so that factual issues concerning restitution for all defendants can be resolved at the same time. The Government respectfully submits that judicial economy will be served by doing so.

Counsel for the defendant Benjamin Cardona, Deron Castro, Esq., has advised the Government that he (Mr. Castro) is inclined to consent to the Government's application, but to get Cardona's consent, he must write a letter to Cardona. Cardona is now incarcerated at Fort Dix. It is not likely, therefore, that Cardona's consent can be obtained by the deadline of March 11, 2010.

Respectfully submitted,

PREET BHARARA
United States Attorney

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